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Identical letters dated 21 May 2001 from the Permanent Representative of Saudi Arabia to the United Nations addressed to the Secretary-General and to the President of the Security Council

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations has taken note of the identical letters dated 7 April 2001 from the Permanent Mission of Iraq to the United Nations addressed to the Secretary-General and to the President of the Security Council concerning Kuwaiti, Saudi and third-country prisoners, detainees and missing persons in Iraq as a result of the Iraqi invasion of Kuwait (S/2001/340).

In this context, the Permanent Mission of Saudi Arabia expresses regret, alarm and astonishment at the scale of the sophistries, false inferences and distortion of the facts contained in the aforesaid letter, which is based not on facts or tangible evidence but by turns on misconstruction and disregard of the resolutions that embody international legitimacy and the principles of international humanitarian law.

Although Saudi Arabia holds itself aloof from engaging in pointless altercations, its Permanent Mission would like to reaffirm the facts set forth hereunder.

The letter indicated above seeks to ignore the resolutions that embody international legitimacy, the principles of international humanitarian law and all of the sincere humanitarian efforts made through the United Nations, the Organization of the Islamic Conference and the League of Arab States to devise a solution to the issue of the prisoners, detainees and missing persons in Iraq as a result of the Iraqi invasion of Kuwait on 2 August 1990 and the situation created by the failure thus far to find a solution to this humanitarian issue.

The efforts being made focus on urging Iraq fully to discharge all of its obligations as set forth in the relevant Security Council resolutions, so as to enhance international peace and security and stability in the region, and to meet the obligations imposed by international humanitarian law. They also urge Iraq to agree in an expeditious manner to resolve the problem of the Kuwaiti and third-country prisoners and missing persons in cooperation with the International Committee of the Red Cross (ICRC) and to do so on humanitarian grounds.

The letter of the Permanent Mission of Iraq asks whether the fact that United States and British aircraft take off from Saudi territory in order to bomb Iraq is compatible with the enhancement of the international peace and security of which Saudi Arabia speaks. The Permanent Mission of Saudi Arabia once again affirms that the United States and British aircraft to which reference is made do not take off from Saudi territory in order to bomb Iraq and that Saudi Arabia has nothing to do with them. As has been affirmed by

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senior Saudi officials on numerous occasions, the United States and British aircraft to which Iraq refers do not take off from Saudi territory.

Member States are fully aware that the establishment of the no-flight zone in southern Iraq was due to circumstances linked with Iraq's aggression against Kuwait and its threats against neighbouring countries. The relevant United Nations resolutions provide for the adoption of whatever measures are necessary for the security and integrity of the neighbouring countries and to ensure that they are not constantly under threat. The no-flight zone is to be regarded as an essential means of achieving the desired objective, and Security Council resolution 949 (1994) is therefore to be understood as the basis for the establishment of an essential mechanism and for the implementation of the no-flight zone as a means of giving effect to the resolution.

In this domain, the real question concerns Iraq's understanding of the enhancement of international peace and security in the region. Does the understanding that Iraq claims to have justify its invasion and occupation of a fraternal neighbouring country, a sovereign State that is a member of the League of Arab States, the Organization of the Islamic Conference, the United Nations and other international organizations, thus violating its sovereignty and dignity and pillaging its property? Does it justify, more than 10 years after the liberation of Kuwait, its continuing to hold some 615 Kuwaitis and others, its refusal to cooperate in determining their fate and its constant threats, up to the present day, against the security and integrity of neighbouring countries?

The Permanent Mission of Saudi Arabia would also like to state that the relevant resolutions, including Security Council resolutions 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991 and 706 (1991) of 15 August 1991, to which Iraq has agreed, explicitly stipulate that Iraq must release the prisoners and detainees, must cooperate, under the auspices of ICRC, in determining the fate of the missing of all nationalities and must fulfil its international obligations. There are also the provisions of resolution 1284 (1999) of 17 December 1999.

In the relevant resolutions, [for example in paragraph 2 (c) of resolution 686 (1991)], the Security Council demands that Iraq:

> "Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals detained by Iraq and return the remains of any deceased Kuwaiti and third-State nationals so detained."

The relevant Security Council resolutions and the norms of international humanitarian law are thus to be regarded as the legal framework for the evaluation of Iraq's compliance on the issue of the prisoners, detainees and missing persons being held as a result of the Iraqi invasion of Kuwait. The relevant provisions of those resolutions do not make any demands on Iraq that go beyond the commitments it has already given and with which it is already bound to comply under the instruments of international humanitarian law, primarily the third and fourth Geneva Conventions of 1949 and their additional protocols.

Reference should furthermore be made in this connection to the agreements signed in the past by Iraq with the coalition forces, which are closely linked with the relevant resolutions in terms of both time and substance. These include the memorandum of understanding signed in Riyadh on 7 March 1991 [S/1999/356, annex III, annex I] and the two documents respectively entitled "Plan of operation designed to ascertain the whereabouts of [*sic*] the fate of the military and civilian missing" and "Rules of procedure

and plan of operation of the Special Subcommittee on Military and Civilian Missing" [S/1999/356, annex III, annex I], both of which were approved by ICRC and signed in Riyadh on 12 April 1991 by Iraq, Saudi Arabia, Kuwait, the United States of America, the United Kingdom and France. These agreements gave rise to the existing mechanism, under the auspices of ICRC, for the functioning of the Tripartite Commission and its Technical Subcommittee, which were established on the basis of the resolutions indicated above and are to be regarded as the two proper mechanisms for the solution of the humanitarian problems involved.

The Permanent Mission of Saudi Arabia is thus of the view that the participation of a particular member in the meetings of these two bodies is not so much a Saudi demand as a question of an agreement that was approved by the Iraqi authorities in the past, through the agreements that were signed in Riyadh, and of compliance with its provisions. There is also a need for the efforts of all the members and for the information they have in their possession on a number of the issues that may be raised at the meetings, such as that of the Iraqi burial grounds that contain the remains of many of the missing Iraqis.

The letter of the Permanent Mission of Iraq states that the Permanent Mission of Saudi Arabia uses the term "prisoners" in referring to the issue of missing Kuwaitis and Saudis, that it does so out of malevolence and that this is to be regarded as a political stratagem on the part of the Saudi authorities. The Permanent Mission of Saudi Arabia would like to state that the term "prisoners" is used basically because of the manner in which these persons were taken to Iraq, namely by force and against their will, during the time of the Iraqi occupation of Kuwait. Moreover, all of the Security Council resolutions on this issue, including resolutions 686 (1991), 687 (1991), 706 (1991) and 1284 (1999), explicitly employ the designation of "prisoners" and call for their release. There were also the agreements reached at Safwan following the ceasefire between the coalition States and Iraq, and the record of the first meeting reflects the fact that a number of issues were addressed that included ceasefire arrangements and the issue of prisoners, detainees and missing persons in Iraq. Even though the letter of the Permanent Mission of Iraq claims that Iraq has complied fully with the resolutions in question, all the evidence refutes this claim in its entirety. The use of this term thus accords with the agreements reached and with the wording of the relevant resolutions. It is therefore not the case that it is a Saudi term to which the Kingdom is trying to give currency.

In this context, the Permanent Mission of Saudi Arabia reaffirms the importance of compliance with international humanitarian law and with the four Geneva Conventions of August 1949 and their additional protocols. Of particular importance in this respect is the Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, which seeks to uphold the dignity, security and integrity of the human being and to secure his rights, freedom and protection from molestation. Iraq's invasion of Kuwait; the conduct of the Iraqi authorities during the time of the Iraqi occupation of the country and their violations of the relevant conventions; the fact that Iraq is continuing to hold more than 615 Kuwaiti, Saudi and third-country prisoners and has not released them more than 10 years after the liberation of Kuwait and, indeed, that it has not throughout this 10-year period provided any information that might have helped in determining their fate — all of this is totally incompatible with the requirements of the relevant resolutions, with the four Geneva Conventions and their exalted principles and with international humanitarian law and it refutes the allegations made in the letter of the Permanent Mission of Iraq.

The Permanent Mission of Saudi Arabia would also like to state that the Kingdom has always welcomed the efforts of ICRC and has been committed to the existing

mechanism for the functioning of the Tripartite Commission and the Technical Subcommittee under ICRC auspices. This refutes the Iraqi claim in its entirety. The fact that Saudi Arabia welcomes the efforts made by the League of Arab States, the Organization of the Islamic Conference and the United Nations, such as the appointment by the Secretary-General of the United Nations of Mr. Yuli Vorontsov as High-level Coordinator for the repatriation of Kuwaitis and third-country nationals and of their remains from Iraq, can in no way be considered as belittling the efforts of ICRC or its fairness, impartiality and humanitarian role. Their involvement is rather to be regarded as a valuable supplement provided by the international community and as an expression of its efforts to contribute to devising a satisfactory solution to this issue on purely humanitarian grounds.

Saudi Arabia has constantly advocated the importance of taking account of the two existing mechanisms under the auspices of ICRC and indeed of commitment to them as the appropriate means of solving the humanitarian problems involved. Iraq did participate in their work in the past. The results that have been achieved, the issues that have been raised through them and the information that has become available from them are the outcome of arduous and constant efforts that have taken more than 10 years. This outcome can reinforce the efforts of any other party seeking to devise a satisfactory solution to this humanitarian dilemma. They have also had the time, the effort and the information to make them a foundation on which to build with commitment to the principles on which they are based and the participation of all of their members, given the importance of their technical capacities and their contributions to resolving many other issues relating to prisoners, detainees and missing persons, such as that of the Iraqi burial grounds. It is to this that the letter of the Permanent Mission of Iraq to the United Nations tries to give an erroneous interpretation and it is this that it tries to endow with a political character devoid of humanitarian considerations.

The Kingdom of Saudi Arabia has, moreover, participated in all the meetings of the Tripartite Commission and the Technical Subcommittee established to consider the issue of Saudi, Kuwaiti and other prisoners, detainees and missing persons in Iraq under the auspices of ICRC and with the participation of Iraq and all the other members of the two bodies. They have held 77 meetings over the past 10 years, the most recent being that of 15 March 2001. Of those meetings, 57 were attended by Iraq and all the other parties whose attendance Iraq uses as a pretext for continuing to boycott the meetings of the two bodies, seeking to overlook the fact that they were parties to the relevant agreements with Iraq's approval, as indicated above, with a view to achieving satisfactory solutions to this long-standing humanitarian issue.

Iraq has not, however, responded to all the efforts made in this regard, and it has not translated its promises into tangible reality. It has not provided positive information to demonstrate its seriousness in seeking solutions to this humanitarian dilemma. Indeed, the humanitarian efforts that have been made by Saudi Arabia, Kuwait and the other States members of the Tripartite Commission and the Technical Subcommittee have been thwarted by Iraq's withdrawal from the two bodies and by its boycott of their humanitarian endeavours as of 30 January 1999 without giving any convincing rationale. This is tantamount to disrupting the work of the two bodies and the humanitarian efforts being made in this regard. It is to be regarded as a flagrant violation of the relevant resolutions and of international humanitarian law. As a result of Iraq's boycott, the Tripartite Commission has continued to hold consultative meetings attended by the other parties and under the auspices of ICRC, in the hope that Iraq will resume its participation.

In its letter, the Permanent Mission of Iraq also mentions the issue of the Saudi pilot Muhammad bin Salih Nadirah, whose aircraft was brought down on 13 February 1991. More than six years after being asked about him, Iraq acknowledged that his alleged remains had been buried by a member of the Iraqi armed forces. This is according to paragraph 7 of the minutes of the twenty-second session of the Technical Subcommittee, held on 30 April 1997, and a statement made in a note from the Iraqi Ministry of Foreign Affairs dated 15 May 1997 (10/M.K./93078). Iraq then claimed that it cooperated in the return of his remains, after some 10 years, on 24 October 2000.

The efforts of Saudi Arabia over a 10-year period were met with different and contradictory Iraqi accounts that ranged from total denial of any knowledge of his fate, to the subsequent claim that the coalition forces had rescued him and returned him to Saudi Arabia, to the determination that his aircraft had been shot down and that he had been killed in an Iraqi minefield, and to the claim that he had died in the crash and that his remains had been buried by a member of the Iraqi armed forces. All of the contradictory Iraqi positions just mentioned reveal the true nature of Iraq's attitude towards this humanitarian issue. The Permanent Mission of Saudi Arabia thus wishes to state that the true state of affairs was that all the information to the effect that the person in question was alive at the time the aircraft was brought down derived from that submitted to the authorities at the time by the ICRC delegation in the Kingdom in its note of 24 January 1993 (93/2031).

The proposal for a plan to search for the aircraft crash site and to retrieve the alleged remains of the pilot from Iraq, which, according to the entry in paragraph 7 of the minutes concerning item 7 of its agenda, had been proposed at the thirty-sixth session of the Technical Subcommittee, held on 2 December 1998, is to be regarded, in the light of Iraq's [subsequent] boycott of its work, as a success for the efforts of ICRC and the other members of the Technical Subcommittee in convincing Iraq at that time to cooperate on this issue on humanitarian grounds and within the framework of the existing mechanism and in doing so despite Iraq's repeated attempts at trickery and its constant endeavour to politicize the issue and other issues relating to prisoners, detainees and missing persons by thwarting the work of the Technical Subcommittee and endeavouring to address the relevant issues at that time outside the scope of the established rules and the existing mechanism.

That some two years passed from the time the proposed plan was first submitted by ICRC on 2 December 1998 until it was implemented on 24 October 2000 is a result of the excuses, arguments and conditions raised by the Iraqi authorities. Sometimes they would argue that the area was full of mines as a result of bombing by the coalition States (although these States refuted this argument); sometimes they would argue that the prevailing weather in the area was not suitable; and sometimes they would argue that Iraqi technical capacities were deficient and would request the assistance of the Saudi authorities in securing them. On the basis of the Iraqi information submitted, the technical requirements for the implementation of the proposed search operation as contained in the plan proposed by ICRC, such as various items of equipment, mine detectors, personnel, helicopters, communications equipment, ambulances, etc., and more, were all provided by the Saudi authorities in an endeavour to resolve this issue. It subsequently transpired, when a start was made on the search operation, that there was no need for most of these items. This exposes without any equivocation the Iraqi allegations and prevarications and the falsity of Iraq's claims and demands. The best proof of this is ICRC's participation and its perception of the true nature of the situation, which demonstrated that these Iraqi demands were not based on tangible reality.

Agreement was reached with representatives of ICRC to hold a coordination meeting of the Saudi technical team and the Iraqi technical team under the auspices of ICRC in Ar'ar on 19 October 2000 in order to discuss the information and detailed maps of the area in which the aircraft had come down and of the place where the alleged remains had been buried that had been submitted by the Iraqi technical team and for the Saudi technical team to present a briefing on the technical preparations indicated above. However, given the contradictory character of the information presented by the Iraqi technical team and its claim that the implementation of the plan would require only limited technical capacities and preparations, the Saudi technical team stated that it would welcome an immediate start on the implementation of the plan at that time. It was thus implemented in the period from 19 to 24 October 2000.

In this context and in an endeavour to clarify the true state of affairs with respect to the operation for the retrieval of the alleged remains of the Saudi pilot that had been lost for some 10 years, at the consultation meeting of the Tripartite Commission held in Geneva on 15 March 2001 Saudi Arabia raised a number of questions relating to the reports of the two independent Swiss experts involved in determining the fate of the Saudi pilot and retrieving his remains and to the results obtained. It did so on purely humanitarian grounds relating, on the one hand, to the right of the Saudi pilot's family to obtain full and complete information 10 years after his aircraft had been shot down and he had disappeared and, on the other hand, to the obligation of Saudi Arabia to ascertain his fate and the circumstances and causes of his death. It also wished to obtain full and complete answers, particularly since the report of the independent Swiss aircraft expert had not addressed some of the aspects that could lead to a determination of the fate of the pilot (such as the ejector seat, the parachute and the pilot's helmet) and the Iraqi authorities had not handed those items over for examination and to be used to determine the causes and manner of the pilot's death. This concern met with great understanding on the part of ICRC, particularly since Iraq had presented many different and conflicting accounts over a six-year period.

This is to say nothing of the fact that the Iraqi authorities did not fulfil their obligation to hand over all of the remains of the Saudi pilot to ICRC. The remains consisted only of a very few small bones weighing no more than 19.4 grams and were in bad condition. ICRC was thus unable to divide them into two parts, one for the Saudi side for analysis at any international laboratory of its choosing and the other for ICRC for analysis at a Swiss laboratory, as set forth in the plan proposed by ICRC and approved by Iraq. All of the remains had to be handed over to ICRC in order to determine whether they were those of the pilot and, if so, the cause and date of his death. The meagre quantity of remains provided by the Iraqi authorities meant that the Swiss laboratory was unable to identify the pilot's DNA unambiguously in one of the two tests carried out. The remains were also in a deteriorated condition because a period of some 10 years has elapsed since they had been buried, according to the Iraqi claims. The independent Swiss forensic expert therefore suggested to the Saudi side that further analyses should be carried out at a world-class laboratory in the United States of America, the United Kingdom or any other country that had the sophisticated technical and laboratory capacities and the necessary expertise in this field. He stated that it might be possible to achieve successful results that would help to determine the age of the remains in an unambiguous or at least approximate manner, taking account of the humanitarian considerations, and to achieve results satisfactory to the family of the pilot Muhammad Nadirah. Saudi Arabia also stressed that the measures it was requesting, whether those relating to the submission of questions to the independent aircraft expert or to the conduct of further analyses of some of the remains retrieved, did

not seek to belittle the competence of the two independent Swiss experts. This was met with great understanding and acceptance on the part of ICRC, just as its purpose was to complete all of the procedures and to answer all of the questions arising out of this matter.

Large amounts of aircraft wreckage disappeared from the site of the crash when the Iraqi authorities removed most of it to sites further inside Iraq — as admitted by Iraqi officials at meetings of the Tripartite Commission and the Technical Subcommittee in the presence of representatives of ICRC and the other parties and as reflected in paragraph 6 (b) of the minutes of the nineteenth session of the Tripartite Commission, held in Geneva on 11 June 1997 — and they left a very small quantity of aircraft wreckage strewn about in the area of the crash site. These facts refute Iraq's claims that the Saudi technicians participating in the implementation of the search plan were able to obtain aircraft wreckage that filled one large low-loader. At this meeting, the Iraqi side stated that the Iraqi authorities had taken large pieces of the aircraft, such as both wings, the tail and a piece on which was written *Sirb al-Ahsa'* ("Al-Ahsa' Squadron") further into Iraq. The Saudi side requested this wreckage at the time in order to examine it and try to find some answers concerning the causes and circumstances of the downing of the aircraft, but the Iraqi side has yet to hand it over.

In sum, the Permanent Mission of Saudi Arabia would like to state that the issue of the Saudi pilot is to be regarded in the same manner as that of the other prisoners, detainees and missing persons in Iraq and that it elicits the same degree of interest. Saudi Arabia believes in accepting God's will and in closure, and it is prepared to accept any authentic results concerning the fate of the Saudi pilot. It is this that it has been trying to learn from the Iraqi side for 10 years in the meetings of the bodies concerned. The Iraqi authorities could have informed ICRC of the death of the pilot at the time it took place and could then have handed over his body to the Saudi authorities, just as in a similar case involving Iraq Saudi Arabia handed over the remains of an Iraqi pilot to the Iraqi authorities through ICRC. This humanitarian attitude on the part of Saudi Arabia has not, however, been met with a corresponding attitude on the part of the Iraqi authorities. Indeed, we have constantly been confronted with Iraq's conflicting positions, and they indicate that it does not wish to resolve this humanitarian issue and that it is trying to exploit it for political reasons.

The Permanent Mission of Saudi Arabia would also like to state that the Kingdom of Saudi Arabia and the States members of the Tripartite Commission and the Technical Subcommittee concerned with matters of prisoners, detainees and missing persons are responsive to Iraq's submissions concerning the Iraqis it claims are missing. Saudi Arabia has accepted the 124 Iraqi dossiers submitted to it through ICRC on humanitarian grounds, and they include 78 Iraqi dossiers that were received by Saudi Arabia in June and August 2000. It is evident to the Saudi authorities that the persons whose names have appeared on these dossiers up to the present time are not to be found in Saudi territory. Their dossiers will nevertheless continue to receive the scrutiny and attention of the Saudi authorities. It should be noted that Iraq's withdrawal from the work of the Commission and the Subcommittee has hampered the exchange of information between the two parties on this matter. Had Iraq continued to participate in the work of these two bodies, this might have assisted the process of searching and inquiring among the other parties in an attempt to achieve tangible results.

The other members of the Tripartite Commission have been diligent in submitting information on the Iraqi burial grounds, identifying their locations inside Iraqi territory and calling on the Iraqi authorities to identify the remains of the Iraqi soldiers buried there,

which are those of some 457 missing Iraqis. This is to be regarded as a most eloquent indication of the cooperation shown by the members of the Tripartite Commission and the Technical Subcommittee. Since the members of the Tripartite Commission submitted this information to the Iraqi authorities at a number of the sessions of the Technical Subcommittee, including its twenty-fourth session, held on 16 July 1997, and its twenty-seventh session, held on 21 December 1997, the Iraqi authorities have continued to be incapable, for reasons and purposes we have thus far been unable to divine, of defining the principles by which it may be possible to be guided in identifying Iraqi mortal remains as a first step that may help in determining the fate of the other Iraqi missing persons that the Iraqi authorities claim went missing during the military operations for the liberation of Kuwait.

Finally, the Permanent Mission of Saudi Arabia reaffirms the country's position that, on humanitarian grounds, it backs, endorses, supports and welcomes any stance, role or effort that is conducive to addressing the issue of the Saudi, Kuwaiti and other prisoners, detainees and missing persons in Iraq and that is based on the relevant United Nations resolutions, all of which require Iraq to cooperate in determining the fate of the missing of all nationalities under the auspices of ICRC and to discharge all of its international obligations.

Saudi Arabia also hopes that Iraq will resume its participation in the existing mechanism for this purpose, which it approved in the past when it signed the instruments establishing the Tripartite Commission on 12 April 1991 and the Technical Subcommittee on 8 December 1994, together with all the other parties. There is a need for their efforts and for whatever information they might have so that the Kuwaiti, Saudi and other prisoners, detainees and missing persons may at long last return to their kith and kin and so that there may be an end to this human suffering that has lasted for close to 10 years. This is the best way to resolve this humanitarian issue.

I should be grateful if you would have this letter circulated as a document of the Security Council.

(*Signed*) Fawzi Bin Abdul Majeed **Shobokshi**
Ambassador
Permanent Representative